HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.12880 of 2005

06-12-2005

Between:

Mohd. Raziuddin Ali

…Petitioner.

And

The State of Andhra Pradesh,

Rep.by its Secretary,

Minority Welfare (Wakf-II) Department,

Secretariat Buildings,

Hyderabad and another.

…Respondents.

HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.12880 of 2005

–

ORDER :

This writ petition is filed by the petitioner aggrieved by the action of the respondents in non-complying the orders of the first respondent by issuing 'No Objection Certificate(NOC)' and transmitting the plans to the Municipal Corporation of Hyderabad(MCH) for approval in respect of the properties bearing Shop Nos.5-9-230/A and 5-9-230/B, situated at Chirag Ali Lane, Abids, Hyderabad, as per the Memo No.1697/Wakf-II/2004-3, dated 20-1-2005 of the first respondent as illegal, arbitrary and contrary to the proceedings of the second respondent in F.No.773/113/J1/Rent/85-Supply, dated 3-3-2004.

According to the petitioner, there was an understanding and agreement between the petitioner and the first respondent-Wakf Board on 3-3-2004 under which an order was passed by the Chief Executive Officer, the first respondent, agreeing to lease out two shops, on condition of making a non-refundable deposit of Rs.2,00,000/- and a rent of Rs.8,000/- with certain other conditions stipulated therein. According to the petitioner, he has already deposited the non-refundable deposit of Rs.2,00,000/- by effecting the payment of Rs.1,00,000/- in the month of March, 2004 and the balance of Rs.1,00,000/- in March, 2005, to be specific, as per the entry in the bank accounts on 12-3-2005. It is stated that though as per the conditions stipulated under the agreeemnt, the first respondent has to deliver possession of the properties with NOC to the petitioner, but as the first respondent itself was not having the power to grant NOC, it sought permission from the Government and
finally the Government has granted the permission by proceedings dated 20-1-2005 and even thereafter the first respondent did not communicate the NOC to the petitioner as well as failed to
deliver possession of the property, but only issued proceedings dated 9-2-2005 demanding the payment of the balance amount of Rs.1,00,000/-, which was not paid, and also a sum of Rs.40,000/- towards the rental arrears with effect from 25-8-2004 upto January, 2005.

According to the learned counsel for the petitioner, unless and until the respondent handover the possession of the property along with the NOC so as to

proceed with the construction, the petitioner is not liable to pay the rent, though he was obligated to pay the non-refundable deposit, which he has already deposited, though the second instalment was deposited belatedly and in view of the delay committed by the respondent in obtaining the NOC as well as in giving delivery of possession, the first respondent is not entitled to make any demand for payment of the rents towards the shops.

A counter is filed on behalf of the first respondent, disputing the allegations made by the petitioner. In fact, it was contended that as per the terms of the order dated 3-3-2004, the petitioner has to pay the rents immediately after completion of the building construction or within six months duration from 26-2-2004, whichever is earlier. In view of the said stipulation, the petitioner is obligated to pay the rents from 25-8-2004 irrespective of the constructions that are effected by the petitioner. The learned standing counsel also contended that, in fact, in the present writ petition, the petitioner is not questioning the liability to pay the rents except seeking a direction for issuing NOC and the plans. Even with reference to the plans, the learned counsel contended that the petitioner is at liberty to obtain the copies submitted to the Chief Executive Officer, the first respondent herein, and submit the same with necessary authorization of the first respondent, if necessary, to the MCH and obtain permission and proceed with the construction as per the approved plans. Therefore, there is no merit in the present writ petition warranting interference by this Court.

Heard both sides and considered the material on record.

In view of the rival contentions, in fact, there was a delay on the part of the first respondent in obtaining NOC from the Government and in any case as the petitioner is liable in terms of the proceedings dated 3-3-2004 even for the rent from 25-8-2004, the petitioner has to deposit the said rents and if the petitioner deposits the same, within two weeks from the date of deposit of the rents, the first respondent is directed to handover NOC as well as the plans submitted by the petitioner for submitting the same before the MCH for its approval and after obtaining permission of the MCH, the petitioner is entitled to proceed with the construction of the two shops let out to it.

Though it was contended by the learned counsel for the petitioner that the second instalment has already been deposited, but in the counter it was stated that the petitioner did not deposit the same. The petitioner, therefore, filed a bank statement showing that a sum of Rs.1,00,000/- was already debited to the petitioner's account, which was paid to the Chief Executive Officer of the Wakf Board. The first respondent is accordingly directed to verify the same and if it is paid, the same has to be taken into account and if it is not paid, the same may be intimated to the petitioner and the petitioner is also directed to deposit the same along with the rents due upto date, within a period of three weeks.

The writ petition is accordingly disposed of with the above directions. No costs.

_____

(S.ANANDA REDDY,J)

06-12-2005.

Msr.

HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.12880 of 2005

06-12-2005

(Msr)